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Tropical/Kent Agreement

FMC Agreement No. 011779

Cooperative Working Agreement

Termination Date: See Article 2

This Agreement has not been previously published



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THIS AGREEMENT is entered into this 19th day of October, 2001 by and between Tropical Shipping & Construction Co., Ltd., 4 East Port Road Riviera Beach, Florida 33404 ("Tropical") and Kent Line International Limited, 300 Union Street, P.O. Box 66, Saint John, N.B., Canada E2L 3X1 ("Kent")

WHEREAS, Tropical and Kent have entered into an Asset Purchase Agreement pursuant to which Tropical will acquire certain assets from Kent that make up that portion of Kent's business as an ocean common carrier of containers ('container liner operator') in trades between ports in Canada, the United States Atlantic Coast and the Caribbean; and

WHEREAS, Tropical will be acquiring use of the Kent name as a trade name and other good will as part of the asset acquisition; and

WHEREAS, Tropical and Kent have agreed, that subject to Federal Maritime Commission requirements, that the value of the assets being acquired is in part based upon Kent not re-entering the business in the trade as a container liner operator in the Trade, as defined below.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Tropical and Kent agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date it becomes effective in accordance with the terms of the Shipping Act of 1984, as amended, or the closing of the transaction pursuant to which Tropical will purchase assets of Kent pursuant to an Asset Purchase Agreement, whichever occurs later.
2. **Period of Agreement.** This Agreement shall be effective for a period of five (5) years from the date it becomes effective. This Agreement shall terminate five (5) years from the date it takes effect.
3. **Geographic Scope.** The geographic scope of this Agreement is the trade between ports in Canada, the East Coast of the United States and the Caribbean (hereinafter the "Trade")¹

¹ Tropical and Kent understand that the FMC's jurisdiction is limited to the United States foreign commerce and that to the extent this Agreement may cover foreign-to-foreign trades, the effectiveness of this Agreement under the Shipping Act of 1984, as

4. **Non-Competition.** Kent shall not, directly or indirectly, conduct a business as a container liner operator in the Trade. In addition, Kent agrees that during the five (5) year period set forth above it will not: (i) solicit for employment any employee of Tropical, it being understood that this restriction does not apply to any employee of Tropical who responds to an advertisement for employment published by Kent; or (ii) interfere with, disrupt or attempt to disrupt the relationship between Tropical and any of its lessors, lessees, licensors, licensees, customers or suppliers.
5. **Adequacy of Consideration.** Kent acknowledges and agrees that a legally sufficient portion of the consideration paid under the Asset Purchase Agreement is attributable to the non-competition agreement and expressly waives any right to assert inadequacy of consideration as a defense to enforcement of this non-competition agreement should such enforcement ever become necessary.
6. **Specific Performance.** Kent also acknowledges that a remedy at law for any breach or attempted breach of this Agreement will be inadequate and further agrees that any breach of this Agreement will result in irreparable harm to the business of Tropical, and Kent covenants and agrees not to oppose any demand for specific performance and injunctive and other equitable relief in case of any such breach or attempted breach.
7. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any provision of this Agreement shall, for any reason, be judged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which such judgment shall have been rendered. In the event that the provisions of this Agreement should ever be deemed to exceed

amended, provides no antitrust immunity nor in any way provides approval of the restrictions set forth with respect to such foreign-to-foreign trades.

the time or geographic limitations permitted by the applicable laws, then such provision shall be reformed to meet the requirements of applicable laws.

IN WITNESS WHEREOF, the parties have set their hands, by their duly authorized representatives, on the day and year first above written.

Tropical Shipping & Construction Co., Ltd.

By Thomas M. Black
Name: Thomas M. Black
Title: Chief Financial Officer

Kent Line International Limited

By _____
Name: _____
Title: _____

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Tropical Shipping & Construction Co., Ltd.

By _____
Name:
Title:

Kent Line International Limited

By _____
Name: *DW L. R. COULS*
Title: *DIRECTOR*

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